

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

SB 992 - HB 1851

March 11, 2011

SUMMARY OF BILL: Increases the penalty, from a Class C felony with a fine not to exceed \$100,000 to a Class B felony with a fine not to exceed \$200,000, for a person to manufacture, deliver, or sell substances containing 15 grams or more of Oxycodone. If the substance contains 150 grams or more of Oxycodone, the violation is punishable as a Class A felony with a fine not to exceed \$500,000.

ESTIMATED FISCAL IMPACT:

Increase State Revenue – Not Significant

Increase State Expenditures – \$5,485,500/Incarceration*

Assumptions:

- Currently, it is an offense for a person to knowingly manufacture, deliver, or sell a controlled substance or to possess a controlled substance with the intent to manufacture, deliver, or sell. The punishment for this offense varies depending on the classification and the amount of the controlled substance used in the offense. Oxycodone is a Schedule II controlled substance. Under current law, a violation is a Class C felony with a fine not to exceed \$100,000.
- According to the Department of Correction (DOC), there has been an average of 446 admissions for Schedule II drug offenses in each of the past 10 years. DOC assumes 10 percent of those (45) would involve 15 grams or more of Oxycodone and would receive a longer sentence as a result of this bill.
- According to the U. S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will result in five additional offenders in the tenth year receiving a Class B felony rather than a Class C felony conviction.
- According to the Department, 39.6 percent of offenders will re-offend within two years of their release. A recidivism discount of 39.6 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (50 offenders x 39.6% recidivism discount = 20 offenders).

- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 30 offenders (50 – 20) serving an additional 2.43 years (5.66 years for a Class B – 3.23 years for a Class C).
- According to DOC, the average operating cost per offender per day for calendar year 2011 is \$60.62. The operating cost for increasing the average sentence by 2.43 years (887.56 days) is \$53,803.89 (\$60.62 x 887.56 days). The total additional operating cost for 30 offenders serving an additional 2.43 years is \$1,614,116.70 (\$53,803.89 x 30).
- DOC assumes 5 percent (22) of the average admissions for Schedule II drug offenses (446) would involve 150 grams or more and would receive a Class A felony rather than a Class C felony. Population growth will result in three additional offenders in the tenth year.
- According to the Department, 46.4 percent of offenders will re-offend within three years of their release. A recidivism discount of 46.4 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (25 offenders x 46.4% recidivism discount = 12 offenders).
- The maximum cost in the tenth year is based on 13 offenders (25 – 12) serving an additional 13.45 years (16.68 years for a Class A – 3.23 years for a Class C). The operating cost for increasing the average sentence by 13.45 years (4,912.61 days) is \$297,802.42 (\$60.62 x 4,912.61 days). The total additional operating cost for 13 offenders serving an additional 13.43 years is \$3,871,431.46 (\$297,802.42 x 13).
- The total additional operating cost is \$5,485,548.16 (\$1,614,116.70 + \$3,871,431.46).
- Based on the Fiscal Review Committee's 2008 study of incarceration costs and fines, collection of fines for felony offenders is negligible. There will not be a significant increase in state revenue as a result.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

/lsc